In this country, the phrase "die by his own hand" in an express condition has generally been construed in the same way as "commit suicide." [8] In England, and a few American jurisdictions, however, the courts have interpreted it as covering self-killing by one unable to understand the moral nature of his act; [9] but most of these jurisdictions will doubtless allow recovery on a policy in this form when the fatal act is induced by an insane irresistible impulse, or is done without knowing that it will result in death.[10]

To protect themselves from these adverse decisions, insurance companies have adopted different expedients. One is to insert in the policy an express condition against "suicide, sane or insane" — a form almost everywhere construed as covering self-killing caused by any form of insanity.[11] But natural as this interpretation seems, a few cases have nevertheless allowed recovery where the insured was so utterly bereft of reason that he did not know the physical results of his acts, and hence could not have intended to take his own life.[12] Such is the doctrine of a recent Kentucky case. *Inter-Southern Life Insurance Co.* v. *Boyd*, 124 S. W. 333 (Ky.).

A second expedient is to use, instead of an express condition, a warranty by the insured that he will not commit suicide, sane or insane. The law implies a condition that if the warranty is broken the underwriter need not pay. So, in the few cases that have arisen, a warranty against suicide has been given the same effect as an express condition in the corresponding form.[13] Warranties are, like conditions, phrased by the underwriter in fact; but unlike conditions, they are, in theory, the language of the insured. And although that is not a sufficient reason for construing warranties less strictly against the underwriter than conditions, yet it might well be seized upon as ground for a distinction by courts which have been over strict in interpreting conditions.

PARTIAL REVOCATION OF WILLS BY ACTS DONE TO THE INSTRUMENT. — Where a testator has attempted to revoke a part of his will, two distinct questions arise: (1) Can there be partial revocation at all? (2) If so, under what conditions? It is almost universally provided that there may be partial revocation by a subsequent attested instrument; and by both the English Statute of Frauds and the Wills Act a clause might also be revoked by certain acts done to the instrument.[1] Similar statutes exist to-day in a

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[8] Phadenhauer *v.* Germania Life Ins. Co., 7 Heisk. (Tenn.) 567; Life Ins. Co. *v.* Terry, 15 Wall. (U. S.) 580.

[9] Borradaile *v.* Hunter, 5 M. & G. 639; Van Zandt *v.* Mutual Benefit Life Ins. Co., 55 N. Y. 169. The word "hand" is not taken literally. To end one's own life by jumping into the river violates this condition. Borradaile *v.* Hunter, *supra.*

[10] Breasted *v.* Farmers', etc. Co., 8 N. Y. 299.

[11] Seitzinger *v.* Modern Woodmen of America, 204 Ill. 58; Haynie *v.* Knight Templars', etc. Co., 139 Mo. 416.

[12] Metropolitan Life Ins. Co. *v.* Thomas, 106 S. W. 1175 (Ky.); Cady *v.* Fidelity & Casualty Co., 134 Wis. 322.

[13] Ellinger *v.* Mutual Life Ins. Co., [1905] 1 K. B. 31; Mutual Life Ins. Co. *v.* Kelly, *supra.*

[1] 1 Vict. c. 26, § 20; Swinton *v.* Bailey, 4 App. Cas. 70; Larkins *v.* Larkins, 3 B. & P. 16.

number of states.[2] Where, however, the statute makes no express provision, some courts have construed the legislative silence to prohibit partial revocation by act done to the will,[3] while in others the opposite result has been reached.[4] In jurisdictions where the first question is answered in the affirmative, the court must determine at the outset whether the act of revocation was intended as a partial or total revocation of the will.[5] And it is usually held that an erasure of the seal, signature, or other formal part of the will works a total revocation.[6]

Where the statutory permission to revoke a will in part exists, it becomes necessary in answering the second question to determine what is the effect of the revocation. It is axiomatic that a testator must not reserve the power to make a testamentary disposition without the required formalities.[7] Hence, although a revocation resulting merely in an annulment of a gift is unobjectionable, yet where its effect would be to create new interests under the will, the original will should be probated.[8] Whether or not the revocation of a clause creates new interests is often a close question of construction. If the only result is to cause a partial intestacy, or to decrease a beneficiary's share, it is properly held that there is no new gift to the heirs or next of kin, for they take, not under the will, but by succession.[9] The revocation may, however, enlarge the residuary gift; and this has been held to create a new disposition.[10] But the more liberal view of the majority is that the residuum is a "catch-all" gift and that the increase passes under a properly attested clause.[11] This view was followed without discussion in the recent decision of *In re Frothingham's Will*, 74 Atl. 471 (N. J. Ct. App.). And a like result has been reached where the increase was due to a revocation in the residuary clause itself.[12] In a more doubtful decision the erasure of the name of one of several joint-tenants was upheld, on the theory that the others thereby acquired no new interest.[13] Where, however, the revocation is of an exception from a larger devise, or turns a life estate into a fee, it clearly creates a new interest, and is invalid.[14]

The doctrine of dependent relative revocation applies to partial revocations, but the courts sometimes confuse the two.[15] The former concedes that there was a revocation but permits it to be construed away to effectuate the testator's supposed intention;[16] whereas the theory of partial

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[2] Tudor *v.* Tudor, 17 B. Mon. (Ky.) 383; Gardiner *v.* Gardiner, 65 N. H. 230; Eschbach *v.* Collins, 61 Md. 478; Varnon *v.* Varnon, 67 Mo. App. 537.

[3] Lovell *v.* Quitman, 88 N. Y. 377; Law *v.* Law, 83 Ala. 432. In some states partial revocation is forbidden or required to be attested. Richardson *v.* Baird, 126 Ia. 408; Giffin *v.* Brook, 48 Oh. St. 211.

[4] Bigelow *v.* Gillott, 123 Mass. 102. See Miles' Appeal, 68 Conn. 237.

[5] Brown's Will, 1 B. Mon. (Ky.) 56; Dancer *v.* Crabb, L. R. 3 Prob. & Div. 98.

[6] Succession of Muh, 35 La. Ann. 394; Townshend *v.* Howard, *supra.*

[7] Eschbach *v.* Collins, *supra;* Miles' Appeal, *supra.*

[8] Home of the Aged *v.* Bantz, 107 Md. 543.

[9] Swinton *v.* Bailey, *supra;* Home of the Aged *v.* Bantz, *supra.*

[10] Miles' Appeal, *supra.*

[11] Bigelow *v.* Gillott, *supra;* Collard *v.* Collard, 67 Atl. 190 (N. J.).

[12] Estate of Wells Tomlinson, 133 Pa. 245; Larkins *v.* Larkins, *supra.* The obliteration of a condition attached to a gift has similarly been upheld. Richardson *v.* Baird, *supra.*

[13] Larkins *v.* Larkins, *supra.*

[14] Pringle *v.* McPherson, 2 Brev. (S. C.) 279; Eschbach *v.* Collins, *supra.*

[15] Gardiner *v.* Gardiner, *supra.*

[16] Onions *v.* Tyrer, 2 Vern. 742.

revocation is that there can be no revocation in the first place when its effect would be to create a new gift. Hence it would seem that, even though the attempted partial revocations are so numerous as to indicate that the testator would rather have died intestate than to allow the unaltered will to stand, the original instrument should be probated.[17]

INDEMNIFICATION OF CRIMINAL BAIL AS A CRIMINAL CONSPIRACY. — The private persons to whose custody as bail a prisoner is yielded up are compelled by the state to give bond, not because the state is willing to take that sum in the prisoner's stead, but because the fear of pecuniary loss will give bail a more lively sense of their duty.[1] If the sureties are indemnified against the absconding of the prisoner by a contract with, or a deposit by, any third party, the state still has some one who, through fear of pecuniary loss, will assume the duty of producing the prisoner.[2] But if the prisoner himself indemnify the bail or their indemnifiers, the state has virtually but the prisoner's own recognizance, plus the naked promise of bail. For this reason a promise by the prisoner of general indemnification of bail is not implied;[3] and an express promise is unenforceable.[4] Yet bail are not disqualified because the prisoner has agreed beforehand to indemnify them,[5] nor has any decision been found that depositing the amount of the bond with the bail is a crime on the part of the prisoner.

A recent decision in England has, for the first time, held that a contract by the prisoner generally to indemnify bail is a criminal conspiracy, even though the bail acted innocently, with no intent to allow the prisoner to abscond and thus to hamper justice. *Rex* v. *Porter*, 26 T. L. R. 200 (Eng., Ct. Crim. App., Dec. 17, 1909). A criminal conspiracy is a combination of two or more to do something unlawful either as a means or as an ultimate end.[6] A crime is unlawful in this sense;[7] but if a completed indemnification, a deposit, is not a crime, *a fortiori* the contract cannot be criminal as being an agreement to commit a crime. The act to be done, however, need not be a crime: any unlawfulness of greater public concern than a trivial private wrong may be enough.[8] A contract of indemnity is unlawful in the civil sense of being unenforceable,[9] but cannot upon this ground alone be considered criminal. But it may well be said that when a contract, ordinarily merely unenforceable, becomes the means through which two or more intend to do something to the prejudice of the community, a criminal conspiracy exists.[10] Thus agreements tending to interfere with the administration of government have been held criminal.[11]

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[17] But *cf.* *In re* Knapen's Will, 75 Vt. 146.

[1] Cripps *v.* Hartnoll, 4 B. & S. 414. See 22 HARV. L. REV. 530.
[2] People *v.* Ingersoll, 14 Abb. Pr. N. S. 23. See 22 HARV. L. REV. 530.
[3] Jones *v.* Orchard, 16 C. B. 614.
[4] Herman *v.* Jeuchner, 15 Q. B. D. 561.
[5] Rex *v.* Broome, 18 L. T. O. S. 19; Reg. *v.* Badger, 4 Q. B. N. S. 468.
[6] U. S. *v.* Benson, 70 Fed. 591, 594. The main case accepts this definition.
[7] See MAY, CRIMINAL LAW, 3 ed., 171–172.
[8] Rex *v.* Turner, 13 East 228; Rex *v.* Pywell, 1 Stark. 402. See MAY, CRIMINAL LAW, 3 ed., 171–172.
[9] Herman *v.* Jeuchner, *supra.*
[10] Rex *v.* Brailsford, [1905] 2 K. B. 730; Rex *v.* Higgins, 2 East 5, 21.
[11] Rex *v.* Mawbey, 6 T. R. 619 (agreement to present false testimony); Rex *v.*